**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.K.DENESAN**

**FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929**

**WP(C).No. 28607 of 2006(E)**

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**PETITIONER:**

**M.O.GEORGE,**
**SUB ENGINEER, GENERATION DIVISION,**
**IDAMALAYAR.**

**BY ADV. SMT.P.R.REENA**

**RESPONDENTS:**

1. **KERALA STATE ELECTRICITY BOARD,**
   **REPRESENTED BY THE SECRETARY,**
   **VYDHUTHI BHAVAN, THIRUVANANTHAPURAM.**

2. **CHIEF ENGINEER (HRM)ELE,**
   **VYDHUTHIBHAVAN, HEAD QUARTERS, PATTOM,**
   **TRIVANDRUM-4.**

3. **DEPUTY CHIEF ENGINEER,**
   **GENERATION CIRCLE, KOTHAMANGALAM.**

**BY GOVT. PLEADER SHRI.K.S.ANIL, SC, KSE BOARD.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/03/2007, ALONG WITH WPC NO. 5172 OF 2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

K.K.DENESAN, J.

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WP(C).No.28607 OF 2006-E
&
WP(C).No.5172 OF 2007-N.

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Dated this the 30th day of March, 2007.

J U D G M E N T

Heard counsel for the petitioner, Legal Liaison Officer for the respondent Board and Standing Counsel for the Income Tax Department.

2. The petitioner is working as Sub Engineer under the respondent Board. He is receiving, admittedly project allowance and isolation allowance.

3. The question for consideration is whether the amount paid towards project allowance and isolation allowance is taxable under the provisions of the Income Tax Act.

4. The petitioner submits that the above amount is exempted from payment of income tax in view of

Section 10, Clause 14, sub Clause (ii) of the said Act. The aforesaid provision reads:

> (ii) 'any such allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at the place where he ordinarily resides, or to compensate him for the increased cost of living' are exempted from computing the income tax."

5. The respondent Electricity Board has a number of project areas. Out of that, Sholayar, Moozhiyar and Idamalayar are the three isolated areas. There is a research division in Idamalayar. The petitioner is working in the Generation Circle, Kothamangalam and according to him, he was directed to discharge duties in the General Division of Idamalayar under the 4th respondent.

6. The respondents would project the view that the amount received towards project allowance and isolation allowance is liable to be taxed and the petitioner is not entitled for exemption. It is contended that it is for that reason directions have

been issued by the respondents to deduct income tax at source computing the above allowances as well.

7. Having regard to the nature of contentions raised by the petitioner on the one hand and the respondents 1 to 4 on the other, this Court directed the petitioner to serve a copy of the writ petition to the Standing Counsel for the Income Tax Department. So that the opinion of the Income Tax Department can be considered. The Income Tax Department has been impleaded as addl.5th respondent.

8. Sri.George K.George, learned counsel appearing for the Income Tax Department invites my attention to a statement filed by the department in WP(C).No.5172 of 2007. In the above writ petition The above statement inter-alia says:

> "2. The petitioner vehemently contends that 'project allowance' and 'isolation allowance' paid by KSEB are not taxable as per clause (ii) of Sub Section (14) of Section 10 of the Income Tax Act. The allowances to exempt u/s.10 (14)(ii) are prescribed in Rule 2-BB(1) of Income Tax Rule.

> 3. The Rule 2BB(1) clearly specify the details of allowance, place at which is exempt and the extent to which is exempt. No allowances other than those prescribed in the Rule can be allowed as exemption u/s.10(14)(ii). There is no mention of 'project allowance' or 'isolation allowance' in the said Table."

9. The learned counsel for the petitioner submits that the grievance of the petitioner is that the respondents 1 to 4 are not adopting a uniform standard and there are several Engineers and other employees who are not directed to pay income tax taking into account project allowance and isolation allowance also.

10. The above contention even if true, will not absolve the petitioner from paying income tax if he is otherwise liable to pay tax. I find merit in the contention of the counsel for the Income Tax Department that unless the areas where the petitioner is discharging duties and is drawing project allowance and isolation allowance, are specifically mentioned in Rule 2BB(1) for availing the benefit of exemption, the question of granting exemption as contemplated in

Section 10(14)(ii) of the Income Tax Act does not arise in the case of the petitioner. WP(C) is, therefore, liable to be dismissed.

11. The respondents 1 to 4 shall take notice of the grievance of the petitioner that a uniform standard is not adopted by the Board in the matter of issuing directions to deduct income tax at source and proper action shall be taken to avoid such complaints.

With the above observation, these Writ petitions are dismissed.

K.K.DENESAN, JUDGE.

kvs/-